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DISCOVERY CONFIDENTIALITY ORDER**

May 29, 2024

By Email and ECF

Hon. Freda L. Wolfson, U.S.D.J.
Lowenstein Sandler
One Lowenstein Drive LLP
Roseland, NJ 07068

**Re: JJHCS's Motion to Compel SaveOnSP to Designate Johnson and
Leger as Document Custodians
Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC,
Case No. 2:22-cv-02632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of JJHCS, we submit this reply letter in further support of JJHCS's motion to compel SaveOnSP to add two document custodians: Jessica Johnson and Kelsey Leger. After more than two months of attempted conferrals during which SaveOnSP refused to add these custodians or offer any counterproposal, SaveOnSP's May 21, 2024 opposition brief now for the first time discloses that SaveOnSP "is doing so" and provides its first search term proposal, which is far too narrow. In light of SaveOnSP's sudden about-face and new proposal, about which the parties have yet to confer, and given Your Honor's recent guidance on the "Adapt" search term, JJHCS respectfully requests that Your Honor direct the parties to proceed as follows:

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- (i) SaveOnSP must produce a hit report (with and without search hit families) by June 4, 2024;
- (ii) SaveOnSP must conduct a reasonable investigation into whether these employees have used personal email addresses to conduct SaveOnSP business and if so, must confirm that they will run the same terms over those email addresses by June 6, 2024;
- (iii) the parties shall confer on appropriate search terms for Jessica Johnson and Kelsey Leger by no later than June 10, 2024; and
- (iv) JJHCS shall submit an update, including the contours of any remaining disputes, to Your Honor by June 17, 2024.

In its opposition, SaveOnSP claims that JJHCS’s motion “is based on a series of inaccuracies,” that SaveOnSP “did not refuse to add” Johnson and Leger as custodians, and in fact “SaveOn is doing so.” Opp. at 1. There was nothing “inaccurate” in JJHCS’s motion: we wrote that SaveOnSP refused to add Johnson and Leger because it did refuse to add them, repeatedly, throughout months of negotiations. *See* Ex. 21 (Mar. 1, 2024 Ltr. from M. Nussbaum to K. Brisson); Ex. 22 (Apr. 1, 2024 Ltr. from M. Nussbaum to K. Brisson); Ex. 23 (Apr. 18, 2024 Ltr. from A. Miner to K. Brisson). SaveOnSP only announced its change of position after JJHCS made its motion. Similarly, SaveOnSP never once proposed any search terms throughout those discussions, so it is remarkably disingenuous for SaveOnSP to now seek credit for something it steadfastly refused to do as part of its meet and confer obligations. Meet and confer is not optional—SaveOnSP should be admonished (once again) to confer in good faith, rather than ignoring JJHCS’s outreach and then changing course during motion practice.

Thus, while JJHCS is glad that SaveOnSP has had a sudden change in heart, its recitation of the record requires correction. As detailed in JJHCS’s opening brief, beginning in mid-February, JJHCS made three successive search term proposals in connection with these employees,

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even while SaveOnSP refused to agree to do anything. *See* Ex. 17 (Feb. 16, 2024 Ltr. from K. Brisson to E. Snow); Ex. 19 (Mar. 15, 2024 Ltr. from K. Brisson to M. Nussbaum); Ex. 20 (Apr. 1, 2024 Ltr. from K. Brisson to M. Nussbaum). JJHCS and SaveOnSP also telephonically conferred regarding this request on March 4, 2024. SaveOnSP now takes the convenient but implausible position that, on May 10, 2024 when JJHCS filed its motion to compel, SaveOnSP had already and silently agreed to add these custodians and indeed “was crafting” its first counterproposal. *Opp.* at 2. It is impossible to understand SaveOnSP’s explanation given that SaveOnSP “decline[d]” to agree to anything on March 1, “decline[d] . . . to add these individuals as custodians” again on April 1, and “decline[d]” a third time to run JJHCS’s search terms on April 18. *See* Ex. 21 (Mar. 1, 2024 Ltr. from M. Nussbaum to K. Brisson); Ex. 22 (Apr. 1, 2024 Ltr. from M. Nussbaum to K. Brisson); Ex. 23 (Apr. 18, 2024 Ltr. from A. Miner to K. Brisson). Far from suggesting its willingness to negotiate, SaveOnSP’s April 29 email stated only that SaveOnSP was “in receipt of [JJHCS’s] April 19, 2024 letter and intend[ed] to reply as promptly as possible.” SaveOnSP’s Ex. 7. No such response ever came, and JJHCS only filed this motion after its proposals were rejected three times and then ignored for three weeks.

Nonetheless, in light of SaveOnSP’s new willingness to add Johnson and Leger as custodians, JJHCS submits that SaveOnSP should be directed to produce a hit report (with and without search hit families) on its proposal and JJHCS’s forthcoming counterproposal by June 4, 2024, and the parties should be directed to meet and confer promptly concerning appropriate search terms for these highly relevant SaveOnSP employees. SaveOnSP already has admitted that these employees [REDACTED]

[REDACTED]

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[REDACTED]. *See* Ex. 8 (Defendant’s Apr. 24, 2024 Supplemental Responses & Objections to Plaintiff’s Interrogatories) at 6–7; Ex. 9 (Defendant’s Feb. 1, 2024 Supplemental Responses & Objections to Plaintiff’s Interrogatories) at 12. And on initial review, several of SaveOnSP’s newly proposed terms are obviously too narrowly drawn. For example, Term 3, which SaveOnSP concedes is meant “to identify documents in which custodians discuss concealing or avoiding copays,” would return only 45 documents under SaveOnSP counterproposal. *See* SaveOnSP’s Appendix A at 2. Similarly, SaveOnSP’s narrowing of Terms 4 and 5, meant to capture documents “where custodians discuss the deceptive methods they purportedly employed” yield a meager five documents combined. *Id.* JJHCS intends to review SaveOnSP’s proposal closely and provide SaveOnSP with a further counterproposal by no later than May 31, 2024.

In addition, SaveOnSP should conduct a reasonable investigation into whether these employees have used personal email addresses to conduct SaveOnSP business and if so, to confirm that they will run the same terms over those email addresses by June 4, 2024. As set forth in JJHCS’s opening brief, [REDACTED]

[REDACTED] *See, e.g.*, Ex. 13 (SOSP_0880855); Ex. 14 (SOSP_0880861); Ex. 15 (SOSP_0880865); Ex. 16 (SOSP_0880868). In mid-February, JJHCS thus asked SaveOnSP to “conduct a reasonable investigation into [Johnson and Leger’s] use of personal email accounts.” Ex. 17 at 3 (Feb. 16, 2024 Ltr. from K. Brisson to E. Snow). SaveOnSP declined to do so. *See* Ex. 18 (Mar. 6, 2024 Email from M. Nussbaum to K. Brisson). If Johnson and Leger have used their personal email addresses for such enrollments, then—

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consistent with Judge Waldor's previous Order on personal email use—SaveOnSP should also produce any relevant documents from the added custodians' personal accounts. *See* D.E. 144 (granting JJHCS's motion to compel personal email accounts associated with Jody Miller and Ron Krawczyk).

Accordingly, JJHCS respectfully requests that Your Honor compel (i) SaveOnSP to produce a hit report (with and without search hit families) by June 4, 2024; (ii) SaveOnSP to conduct a reasonable investigation into whether these employees have used personal email addresses to conduct SaveOnSP business and if so, to confirm that they will run the same terms over those email addresses by June 6, 2024; (iii) the parties to confer on appropriate search terms for Jessica Johnson and Kelsey Leger by no later than June 10, 2024; and (iv) JJHCS to submit an update, including the contours of any remaining disputes, to Your Honor by June 17, 2024.

Respectfully submitted,

/s/ Jeffrey J. Greenbaum
JEFFREY J. GREENBAUM

cc: Counsel of record for SaveOnSP